

MDEP Concept Draft Language for Returnable Beverage Container Rule

Deletions from the current rule are shown in double-strike. Additions are underlined. Any round two changes are highlighted.

1. Definitions (Summary: removes definitions that exist in statute; removes the definition of contracted agent; adds “drink”, which retains some of the exemptions previously provided by “beverage” but not all; adds new terms.)

As used in this chapter and unless the context otherwise indicates, the following words and phrases have the following meanings:

A. “Beer” means malt liquor, as defined in 28-A M.R.S. § 2(18).

~~B. “Beverage” means Malt Liquor, Spirits, Wine, Wine Coolers, Hard Cider, Low Alcohol Spirits, soda or noncarbonated water, and all nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for internal human consumption.~~

~~===== The term Beverage excludes the following: =====~~

~~===== (1) A liquid which is (a) a syrup, (b) in a concentrated form or (c) typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces or condiments; =====~~

~~===== (2) A liquid which is a drug or infant formula as defined by the *Food, Drug and Cosmetic Act*. (21 U.S.C. §§ 321(g) (1) and (z)) as amended through June 22, 2009; =====~~

~~===== (3) A liquid which is designed to be consumed only as a nutritional supplement and not as a Beverage; =====~~

~~===== (4) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to such users; =====~~

~~===== (5) Products designed to be consumed in a frozen state; =====~~

~~===== (6) Instant drink powders. =====~~

~~===== (7) Seafood, meat or vegetable broths, or soups, but not juices; =====~~

~~===== (8) Maine produced apple cider and blueberry juice; =====~~

~~(9) Unflavored rice milk, unflavored soymilk, Milk and Dairy Derived Products.~~

~~(10) Products sold in Paper or Cardboard Containers.~~

- ~~B. “Commingling Agreement” means an agreement between two (2) or more Initiators of Deposit allowing some or all beverage containers for which they have initiated deposits to be commingled by Dealers and Redemption Centers.~~
- ~~C. “Commissioner” means the Commissioner of the Department of Environmental Protection.~~
- B. “Closure device” means the part of the container that is removed to allow a consumer to drink a beverage.
- ~~D. public or private company or individual who enters into an agreement with the Initiator of Deposit to pick up empty beverage containers from Redemption Centers and Dealers.~~
- ~~E. “Dealer” means a business entity that sells, offers to sell or engages in the sale of Beverages in a beverage container to a consumer from a retail Food Establishment licensed by the Department of Agriculture, Conservation & Forestry as defined in 22 M.R.S. §2152 or an Eating Establishment licensed by the Department of Health & Human Services as defined 22 M.R.S. §2491, including but not limited to an operator of a vending machine containing Beverages in beverage containers.~~
- ~~F. “Department” means the Maine Department of Environmental Protection.~~
- ~~G. “Distributor” means a Person who engages in the sale or distribution of Beverages in beverage containers to a Dealer in this State, including a Manufacturer or manufacturer’s agent who sells directly to a Dealer.~~
- C. “Drink” means a liquid ready for consumption. Drink does not include a concentrate; an additive; or a liquid that is usually heated prior to consumption, including soups, broths, or infant formula.
- D. “EAN” means an International Article Number, previously called a European Article Number, 13-digit barcode.
- ~~E. “Fortified Wine” means any liquor containing more than 15.5% alcohol by volume that is produced by the fermentation of fruit or other agricultural Product containing sugar, and Wine to which Spirits have been added as long as the resulting liquor does not exceed 24% alcohol by volume.~~
- E. “Full-service redemption location” is a redemption center or redeeming dealer where an attendant or reverse vending machine is available to receive bulk loads of unsorted containers and a customer can receive cash for the redemption value of containers at the time of redemption.
- F. “Hub and Spoke System” means a collection system in which redeemed beverage containers from multiple smaller redemption center or redeeming dealer locations

are brought to one or more **larger**, centralized locations for processing or consolidation.

~~J. "Hard Cider" means liquor produced by fermentation of the juice of apples or pears, including, but not limited to, flavored, sparkling or carbonated cider, that contains not less than 1/2 of 1% alcohol by volume and not more than 8.5% alcohol by volume.~~

~~"Initiator of Deposit" means either a Manufacturer or Distributor that is licensed by the Department to initiate deposits on beverage containers with labels properly registered under 38 M.R.S. §3105(3) and meeting the deposit requirements enumerated in 38 M.R.S. §3103.~~

G. "Liquor" means Spirits, Wine, Malt Liquor, Hard Cider, or any substance containing liquor intended for human consumption that contains more than 1/2 of 1% of alcohol by volume. has the same meaning as in [Title 28-A, section 2, subsection 16](#).

H. "Low-Alcohol Spirits Product" means a Product containing Spirits that has an alcohol content of 8% or less by volume. has the same meaning as in [Title 28-A, section 2, subsection 16-A](#).

I. "Malt Liquor" means Liquor produced by the fermentation of malt, wholly or partially, or from any malt substitute, which contains 1/2 of 1% of alcohol or more by volume. Malt Liquor includes, but is not limited to, ale, beer, porter and stout. Malt Liquor includes Beverages made with Malt Liquor, but to which no Spirits are added. has the same meaning as in Title 28-A, section 2, subsection 18.

~~O. "Manufacturer" means a Person who: offers Beverages for sale in or into Maine under its brand or label or licenses other entities to offer Beverages for sale in or into Maine under its brand or label, or imports a Beverage into the United States that is manufactured by a Person without a presence in the United States; and an out-of-state wholesaler of Liquor that holds a certificate of approval in accordance with Maine law under Title 28-A.~~

~~P. "Member Dealer" means any Dealer who has entered into an agreement with a licensed Redemption Center to manage the redemption of containers sold by that Dealer.~~

J. "Milk and Dairy-Derived Products" means whole milk, skim milk, cream, low-fat milk, or any combination and includes other Products of which the single largest ingredient is whole milk or milk fat or milk with varying percentages of milk fat.

K. "Municipality" means a city, town, village or plantation with a population of more than 50 people, as **identified** ~~defined~~ in the most recent Maine Municipal Directory by the Maine Municipal Association.

- ~~R. "Paper or Cardboard Container" means a container which is composed of at least 80 percent by volume of paper material.~~
- ~~S. "Person" means an individual, partnership, corporation or other legal entity.~~
- L. "Obligated dealer" means a dealer that is obligated to provide redemption services, either directly or through a written agreement with a licensed redemption center, in accordance with 38 M.R.S. § 3106(1).
- M. "Operational Efficiency" means the ratio of revenue to costs for a total system.
- N. "Original agreement" means the commingling agreement on file with the Department at the time an initiator asks to join.
- O. "Process" means to break or crush beverage containers after redemption.
- P. "Product" means an item as determined by a separate label and/or Universal Product Code or International Article Number.
- Q. "Redeeming dealer" means a dealer redeeming beverage containers and tendering them to commingling groups or the commingling cooperative for pickup and payment in accordance with 38 M.R.S. § 3106(7 and 8-A).
- R. "Refillable beverage container" means a beverage container, the construction of which allows it to be refilled at least five times, and that, when redeemed in accordance with this chapter, is returned to any beverage manufacturer to be refilled with a beverage to the extent that current washing infrastructure allows.
- ~~U. "Redemption Center" means any place of business that accepts empty returnable beverage containers from either consumers or from Dealers, or both, and that is licensed by the Department as a Redemption Center.~~
- ~~(1) Reverse Vending Machines (RVMs) are considered to be a Redemption Center if they are used as "stand alone" devices and not as a part of a licensed Redemption Center.~~
- ~~(2) If an RVM is used as a "stand alone" device and not as part of a licensed Redemption Center, it will be the responsibility of the lessee or device owner to license the location as a Redemption Center as required in 38 M.R.S. §3113.~~
- V. "Retailer" means a Dealer that sells, offers, or provides for retail sale, Beverages in beverage containers.
- ~~W. "Reverse Vending Machine" or "RVM" means an automated device that uses a laser scanner, microprocessor, or other technology to accurately recognize the~~

~~Universal Product Code on containers and accumulates information regarding containers redeemed, thereby enabling the RVM to accept containers from redeemers and to issue script for their refund value.~~

- ~~X. "Shell" means the standard trade package made of fiberboard, wood or plastic designed for packaging, carrying or transporting glass or plastic beverage containers.~~
- S. "Shipping receptacle Carton" means the standard trade package used made of cardboard or other material designed for packing aging carrying or transporting redeemed all types of beverage containers that have not been processed, and includes plastic bags used for the return of such containers
- T. "Size" means the liquid content of a beverage container, such as 500 ml, 2 liter.
- AA. "Spirits" means any Liquor produced by distillation or, if produced by any other process, strengthened or fortified by the addition of distilled Spirits of any kind. "Spirits" does not include Low Alcohol Spirits Products or Fortified Wine.
- ~~U. "Sort", when used as a noun, means a set of beverage containers that are commingled when redeemed.~~
- ~~BB. "Type" means the composition or kind of material, such as glass, metal or plastic, and unique physical design or construction of a beverage container, such as a bottle, can, or flip top container.~~
- V. "Universal Product Code" or "UPC" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers to identify a Product. Universal Product Code may also mean any accepted industry barcode which replaces the UPC including but not limited to Universal Product Code (UPC), EAN and other codes that may be used to identify a product.
- ~~DD. "Wine" means any Liquor containing not more than 24% alcohol by volume that is produced by the fermentation of fruit or other agricultural Products containing sugar or Wine to which Spirits have been added not to exceed 24% by volume. Wine includes, but is not limited to, table wine, still wine, sparkling wine, champagne and Fortified Wine, provided that the alcohol content is not above 24% by volume. For purposes of this chapter, Wine does not include Wine Coolers.~~
- ~~EE. "Wine Cooler" means a Beverage of less than 8% alcohol content by volume consisting of Wine and:~~
- ~~a) Plain, sparkling or carbonated water; and~~
- ~~b) Any one or more of the following:~~

- ~~(i) fruit juices;~~
- ~~(ii) fruit adjuncts;~~
- ~~(iii) artificial or natural flavors or flavorings;~~
- ~~(iv) preservatives;~~
- ~~v) coloring; or~~
- ~~(vi) any other natural or artificial blending material.~~

2. **Prohibitions** (Summary: adds language clarifying that it is prohibited to sell a beverage in a beverage container if the registered initiator of deposit has not initiated a deposit on the container.)

A Manufacturer, Distributor, seller, or Dealer may not offer a Beverage for sale to consumers in this State:

- A. In a metal container designed or constructed so that part of the container is detachable for the purpose of opening the container without the aid of a separate can opener, except that nothing in this Subsection prohibits the sale of a container, the only detachable part of which is a piece of adhesive-backed tape, a sanitary cover, or a screw-off bottle top;
- ~~B. In a container composed of one or more plastics if the basic structure of the container, exclusive of the closure device, also includes aluminum or steel; or~~ In a container composed of one or more plastics if the basic structure of the container, exclusive of the closure device, also includes aluminum or steel.
- C. In a beverage container, if ~~the~~ the container label does not meet the standards in Section ~~7-8~~ (labeling) and the label is registered with the Department in accordance with Section ~~8-9~~ (label registration) of this chapter.
- D. In a beverage container, if ~~a~~ the registered initiator of deposit has not initiated a deposit on the unit in accordance with section (initiating deposit). ~~Dealers can assume the deposit has been initiated if informed of that fact by the distributor, the initiator of deposit, the commingling group, or the commingling cooperative.~~

Note: Appropriate refund value is governed by M.R.S. §3103. Low-alcohol spirits products must have a refund value of at least \$0.05.

3. Initiating Deposit (Summary: clarifies that it is illegal to sell a beverage if no deposit has been initiated; clarifies what is required to initiate a deposit; removes licensing requirement and fee language included in statute; removes language specifying who is responsible for registering labels; allows an alternative party to act as an initiator of deposit with Department approval; requires IODs to report the distribution networks for which they are reporting sales; clarifies Department auditing ability; enumerates (previously existing) initiator responsibilities; and allows the Department to obtain estimates of sales data if Maine specific data are not available).

A. It is illegal to sell or offer for sale a beverage in a beverage container in or into the state on which a deposit is not initiated.

(1) Deposits must be charged to the entity buying a beverage and shown as a separate line item on the receipt or invoice.

(2) If a distributor brings a beverage in a beverage container into the state for which it was not charged a deposit by the initiator of deposit, the distributor must charge the deposit when selling the beverage and pass the deposit to the entity that initiates the deposit on that beverage.

~~(1) Applications for approval of Initiators of Deposit of small breweries and small wineries that produce no more than 50,000 gallons of its Product or a bottler of water who annually sells no more than 250,000 containers each containing no more than one gallon of its Product must include an annual license fee of \$50.00.~~

~~(2) Applications for approval of Initiators of Deposit of small beverage Manufacturers whose total production of all Beverages from all combined manufacturing locations is less than 50,000 gallons annually must include an annual license fee of \$50.00.~~

~~(3) All other applications for approval of Initiators of Deposit must include an annual license fee of \$500.00.~~

B. The entities responsible for initiating deposit are as follows.

~~(3) The Bureau of Alcoholic Beverages and Lottery Operations will initiate the deposit on Spirits. The Manufacturer is responsible for meeting the labeling requirements in Section 7, and for registering the labels for these Beverages on behalf of the Bureau of Alcoholic Beverages and Lottery Operations in accordance with Section 8.~~

(4) The manufacturer will be the initiator of initiate the deposit on beverages other than spirits when the beverages are sold in refillable containers.

a. ~~sold in non-refillable containers, and the manufacturer is the sole distributor in Maine; or~~

b. ~~sold in non-refillable containers and sold through non-~~ not sold in or into Maine through geographically exclusive distributorships.

(5) The distributor will initiate the deposit on beverages other than spirits when the beverages are sold in or into Maine through geographically exclusive distributorships except that, in the case of refillable beverage containers, the manufacturer may elect to be the initiator of deposit.

~~E. For beverages, other than spirits, sold in non-refillable containers through geographically exclusive distributorships, the distributor will initiate the deposit. The Manufacturer is responsible for meeting the labeling requirements in Section 7 and registering the labels for these Beverages in accordance with Section 8.~~

Note: "Manufacturer" means a person that:

A. Sells or offers for sale a beverage in the State under the manufacturer's brand or label;

B. Licenses another person to sell or offer for sale a beverage in the State under the manufacturer's brand or label;

C. Imports into the United States for sale or offering for sale in the State a beverage that is manufactured outside of the United States by another person without a presence in the United States; or

D. Is an out-of-state wholesaler of liquor that holds a certificate of approval issued pursuant to Title 28-A.

~~B. The Manufacturer is responsible for ensuring the labels for these Beverages meet the labeling requirements of Section 7 and are registered in accordance with Section 8.~~

(6) Notwithstanding sections (second and third above), another entity may initiate deposit if it proves, to Department satisfaction, that it is able to initiate deposit for all beverage containers of the product that are sold in or into the State.

(7) When there is a change in the initiator of deposit, the original and new initiators of deposit will determine the date on which the new initiator of deposit will be responsible for pickup. In no case will the effective date occur more than 35 calendar days from the date the new initiator of deposit takes over sales for the brand.

C. For all beverage containers for which it is the initiator of deposit, an initiator of deposit has the following responsibilities, which can be fulfilled directly, through the commingling group of which it is a member, through the commingling cooperative, or through another contracted party. The initiator of deposit is the entity ultimately responsible for:

(1) Initiating the deposit for beverages sold in or into the state and informing distributors of the need to charge and pass back deposits when selling a beverage into the state;

- (2) Pick~~ing~~ up its beverage containers or its share of commingled beverage containers that have been prepared by obligated dealers and redemption centers in accordance with Section (pickup from RCs and redeeming dealers) 42;
- (3) Facilitating the recycling or refill of those containers;
- (4) Paying the obligated redeeming dealers and redemption centers handling fees for the handling of such beverage containers; and
- (5) Reimbursing obligated redeeming dealers and redemption centers for the deposits paid out on such beverage containers.

D. Reporting requirements.

An Initiator of Deposit will annually and upon request, provide the Department, the commingling group of which it is a member, and the commingling cooperative licensed Redemption Centers that manage their beverage containers a current list of Beverages on which it initiates deposit. the Department with and notify the Department, the commingling group of which it is a member, and the commingling cooperative the Department and licensed Redemption Centers that manage their beverage containers at least monthly of the addition and discontinuance of any Products on for which it they initiates deposit.

- (1) When an initiator of deposit changes its contracted agent or its participation in a commingling agreement, the initiator of deposit will provide redeeming dealers obligated dealers that redeem beverage containers, redemption centers, and the Department with notice of any changes that affect container sorting or pickup requirements.
- (2) Initiators of deposit must annually report to the Department, on forms prescribed by the Department, the number of beverage containers sold and redeemed in the state delineated by redemption value, and beverage container material type, and size. Data on beverages sold must be provided in full detail upon request and must be figured as follows also include a list of the distribution networks for which sales are being reported.
 - (a) The Department may audit data provided, in which case the initiator of deposit must substantiate reported data with paperwork showing the sales to each distribution network.
 - (a) If the initiator of deposit does not report sales for all distribution networks identified via distributor reporting, the initiator of deposit must provide and substantiate missing sales data within 90 days. If an IOD cannot provide and substantiate missing sales data within 90 days, it must:
 1. Separately estimate the number of beverage containers sold into Maine for each distribution network that may sell, offer for sale, or

distribute for sale in or into the State, assuming equal per capita sales in each state included in the distribution area; and

2. Report, for each distribution network, the distributor, the distribution area, and the total number of units distributed through that network.

If an initiator of deposit has Maine specific sales data for some sales distribution pathways it must report Maine specific sales for those distribution pathways for which it has state specific sales data in accordance with paragraph (a) and estimate the number of beverage containers sold through other pathways in accordance with paragraph (b). ~~If required by the commingling cooperative, it must pay a reporting fee to the commingling cooperative equal to 1% of its total annual program payments to account for the uncertainty associated with its data.~~

- (b) If an initiator of deposit does not report Maine specific sales for all distribution networks, it is in violation of 38 M.R.S. § 3119 (1) and subject to penalties under 38 M.R.S. § 3111.

~~Note: An Initiator of Deposit is responsible for administration of the deposit transaction fund, reporting, and transfer of abandoned deposit amounts in accordance with Unclaimed deposits, 38 M.R.S. §3108.~~

4. Dealer responsibility (Summary: new section that requires reporting on dealer compliance with 38 M.R.S. § 3106(1) and identification of distributors.)

~~A. Provide for the redemption of beverage containers by~~

- (1) Redeeming containers in accordance with applicable sections of 38 M.R.S. §3106 and 06-096 ch. 426(10), which includes use of a bag drop location or account based bulk processing facility, and submitting to an annual inspection by the Department,
~~or~~

- (2) Signing an agreement with a licensed redemption center and conspicuously posting the name and address of the redemption center which serves the obligated dealer for purposes of redeeming returnable beverage containers.

- B. Any dealer that is an obligated dealer or redeeming dealer must report annually to the Department, on a form provided by the Department, stating how it is providing for the redemption of beverage containers; providing a copy of a signed agreement with a redemption center, if applicable; and listing the distributors from which it buys beverages in beverage containers.

3. 4. Licensing of Redemption Centers (Summary: removes licensing fee language that is in statute; removes some repetitive language; exempts redemption

center applications from the requirement to file applications; clarifies licensing requirements and the manner in which an applicant can show compelling public need; and clarifies the manner and situations in which an application can be denied, suspended, or not renewed.)

~~A. All Redemption Centers within the State of Maine shall be licensed with the Department prior to beginning operation. Applicants for approval of a Redemption Center shall file an application and a \$50.00 license fee with the Department annually. Redemption centers shall allow the Department to conduct a facility inspection and meet all applicable requirements prior to licensure.~~

A. All a Applicants for a redemption center shall utilize forms provided by the Department and shall supply the information requested thereon.

(1) Applicants with a current redemption center license that are applying to continue operations at the same location must apply for a renewal.

(2) Applicants looking to open a new redemption center in a location place where a redemption center is not currently operating must apply for a new redemption center.

(3) Applicants looking to change the ownership of an existing redemption center must apply for a license transfer.

(4) Applications for a new redemption center or license transfer do not require a notice of applications in accordance with Processing of Applications and Other Administrative Matters, 06-096 ch. 2 § 13, provided they send the notice to the municipality and any active redemption centers in the municipality and copy the Department. Applications for a renewal do not require any notice of applications in accordance with 06-096 ch. 2 § 13.

B. The Commissioner may approve an application for a new Redemption Center or a license transfer if the Commissioner finds that the facility:

(1) Will provide a convenient service for the return of empty beverage containers, ~~has agreements with local Retailers (Dealers),~~

(2) Has an agreement with at least one local dealer;

(3) Has sufficient, covered, secure storage to store enough sorted beverage containers to fill a tractor trailer or, if the redemption center expects to produce less than a tractor trailer's worth of material over a fifteen-day time-span, the anticipated volume of beverage containers based on the beverage container pickup requirements outlined in section 12;

- (4) Will be open for business for the acceptance of empty beverage containers from the public for a minimum of three days per week, one of which falls on a Saturday or Sunday, and ~~shall be open~~ will accept empty beverage containers a minimum of 20 hours per week;
 - (5) Has adequate area out of a public way to accommodate pickups by vehicles large enough to efficiently pick up the volume of containers produced while allowing for normal traffic flow and safe access for customers returning beverage containers;
 - (6) Meets the requirements under 38 M.R.S §3113(3); is proposed for a municipality with a population of less than 5,000 which has no licensed redemption center; or meets the requirements under 38 M.R.S §3113(4). The Department, in evaluating compelling public need, can consider, but is not limited to considering:
 - (a) Recognition of need from the municipality government in which it is located;
 - (b) Support from adjacent municipalities for additional redemption centers;
 - (c) Transient or seasonal population of the area;
 - (d) Whether the municipality is considered a primary, secondary, small, or specialized Maine service center as identified by the Department of Agriculture, Conservation, and Forestry's Municipal Planning Assistance Program; and
 - (e) Whether the redemption center will provide a redemption option, including but not limited to, manual sort, reverse vending machines, a bag-drop program or an account-based bulk processing program that is not currently provided by existing redemption centers;
 - (7) Meets all other licensing requirements enumerated in this chapter, 06-096 C.M.R. ch. 2, and 38 M.R.S. §3109.
- C. In making a ~~this~~ determination with respect to a renewal application, ~~an existing Redemption Center~~, the Commissioner may consider ~~its~~ past and current compliance with the requirements of this chapter, ~~and~~ the quality of the service provided; prior provision of title, right, or interest; and past determinations of compelling need, in addition to those criteria enumerated in section B.
- ~~D. After a license has been issued to a Redemption Center, the owner shall apply to the Department for approval of any additional Dealers obtained after the then-current annual license has been issued. The Department's decision as to whether such Dealers may be Member Dealers must be made according to the criteria set forth in Subsection C above.~~

- D. Denials. The Department shall provide written notice when an applicant is denied a license. This notice must provide the reason or reasons for the denial or non-renewal of the license.
- E. All licenses are subject to suspension or non-renewal for good cause shown, including but not limited to ~~unsafe practices, falsification of reports, or serious or continued violation of this chapter.~~ unsafe or unsanitary practices; falsification of reports; failure to operate in accordance with the conditions of the license; repeatedly preparing shipping receptacles for pickup with fewer than the required number of beverage containers; and other serious or continued violations of this Chapter. Except in cases where there is an immediate threat to human health or the environment, prior to suspension or non-renewal the Department shall:
- (1) Send notice of failure to comply with the rules and regulations outlined in 38 M.R.S. §§3101-3119 or this Chapter; and
 - (2) Allow a licensee to submit a corrective action plan. A corrective action plan must be submitted within 30 days of the initial notice of failure to comply.
 - (a) The Department may approve the corrective action plan as submitted, approve the plan with required changes, or reject the plan.
 - (b) The Department may require the licensee to demonstrate implementation of an approved corrective action plan.
 - (c) If the licensee fails to submit a corrective action plan, if the Department rejects a corrective action plan, or if the Department determines that a licensee has failed to implement an approved corrective action plan, the Department shall suspend the license and deny any subsequent renewal application.

Note: Along with the right to file an appeal in accordance with the *Maine Administrative Procedure Act*, 38 M.R.S. §344(2-A) provides for appeal of a Department licensing decision to the Board of Environmental Protection: “Any person aggrieved by a final license or permit decision of the Commissioner may appeal that decision to the board. The filing of an appeal with the board is not a prerequisite for the filing of a judicial appeal.”

- ~~F. The Commissioner may approve only one application for a Redemption Center license in a municipality with a population of 5,000 or less.~~
- F. Any operating Redemption Center destroyed as a result of a catastrophic event, such as a fire, flood or other natural disaster, may rebuild and obtain a license to operate a Redemption Center on the same property or open a Redemption Center in an already existing structure within the same municipality as the original Redemption Center. The

replacement Redemption Center need not comply with 38 M.R.S. §3113(3), as long as it is in operation within six (6) months of the catastrophic event.

~~G. Agreements to serve Dealers must be in writing and must state the name and address of the Dealer to be served and the distance from the Dealer to the Redemption Center. The agreements must be signed by both parties. For purposes of compliance with Subsection 3(C) of this chapter, only Dealers with a permanent presence in a “brick and mortar” retail Food Establishment (as defined in 22 M.R.S. §2152(7-A)) or Eating Establishment (as defined in 22 M.R.S. §2491(7)) will be considered for an approved agreement.~~

~~H.~~ G. Agreements to serve dealers must be in writing and must state the name and address of the dealer to be served and the distance from the dealer to the redemption center. The agreements must be signed by both parties. For purposes of compliance with Subsection 3(C) of this chapter, only dealers with a permanent presence in a “brick and mortar” retail food establishment (as defined in 22 M.R.S. §2152(7-A)) or eating establishment (as defined in 22 M.R.S. §2491(7)) will be considered for an approved agreement.

6. ~~5.~~ Contracted (Summary: cut; some content exists in statute; some content moved to section about pick up from redemption centers and dealers.)

~~B. A Contracted Agent is required to perform all of the pickup functions of the Initiator of Deposit with whom they contract unless expressly exempted in the contractual agreement between the initiator and the Contracted Agent.~~

~~D. Contracted Contracted Agents shall notify the Department whenever Initiators of Deposit with whom they have contracts and/or beverages containers which they pick up are added or discontinued.~~

6. ~~Refund Value, and Responsibility for Initiation of Deposit and Label Registration~~
(Summary: cut because it all exists in statute.)

~~A. The refund value on Wine and Spirits may not be less than \$0.15. The refund value on all other Beverages may not be less than \$0.05.~~

~~B. The Bureau of Alcoholic Beverages and Lottery Operations shall initiate the deposit on Spirits. The Manufacturer is responsible for meeting the labeling requirements in Section 7, and for registering the labels for these Beverages on behalf of the Bureau of Alcoholic Beverages and Lottery Operations in accordance with Section 8.~~

~~C. The Manufacturer shall be the Initiator of Deposit on its brand of Beverages other than Spirits when the Beverages are:~~

~~(1) sold in refillable containers;~~

~~(2) sold in non-refillable containers, and the Manufacturer is the sole Distributor in Maine; or~~

~~(3) sold in non-refillable containers, and sold through non-geographically exclusive distributorships.~~

~~The Manufacturer is responsible for meeting the labeling requirements in Section 7 and registering the labels for these Beverages in accordance with Section 8.~~

~~D. For Beverages, other than Spirits, sold in non-refillable containers through geographically-exclusive distributorships, the Distributor shall initiate the deposit. The Manufacturer is responsible for ensuring the labels for these Beverages meet the labeling requirements of Section 7 and are registered in accordance with Section 8.~~

~~Initiators of Deposit must be licensed with the Department pursuant to 38 M.R.S. § 3113 and in accordance with this chapter prior to distribution of any Beverage requiring deposit within the State of Maine.~~

7. Distributor Requirements (Summary: clarifies distributor reporting to initiators of deposit, adds annual reporting on products sold; and allows a distributor to remedy unlawful sales through pickup and removal of product.)

A. A distributor shall provide each initiator of deposit with all Product sales data necessary to comply with (Section Initiating deposit, reporting requirements).

B. At the discretion of the Department, a distributor that has sold a beverage that is prohibited from sale by 38 M.R.S. § 3110 or 38 M.R.S. § 3107(3-B)(3)(I)(2) or is removed from sale in accordance with 38 M.R.S. § 3105(6) may avoid penalties levied in accordance with 38 M.R.S. § 3111 by collecting the products it should not have sold and removing them from the state.

C. A distributors of beverages in beverage containers must report to the Department by March 1, annually, a list of products it sells in or into the state.

7.8. Labeling Requirements (Summary: Clarifies that labeling must be present on the container both when sold and after having been consumed; allows for the provision and approval of stickers for a commingling group; removes the requirement that a manufacturer provide evidence of product labeling to a distributor).

- A. ~~On printed labels, the refund value and the word "Maine" or the abbreviation "ME"~~
The labeling required by M.R.S. 3105(1) must be clearly and conspicuously displayed on every beverage container using letters, numerals, and symbols not less than 1/8 inch high in clear and prominent typeface and a color contrasting with its background. The labeling must be present and visible both when the container is full and when it is empty. ~~The refund value may not be indicated on the bottom of the container. For~~ Labels printed directly on the container, the refund value and the word "Maine" or the abbreviation "ME" must be printed using letters, numerals, and symbols not less than 1/8 inch high in clear and prominent typeface on a smooth and even surface, and in a color that contrasts with the background both when the container is full and when it is empty.

On metal beverage containers the refund value and the word "Maine" or the abbreviation "ME" must be embossed, incised, or printed clearly and conspicuously on the top of each beverage container using letters, numerals, and symbols not less than 1/8 inch high. On metal beverage containers sold with a sanitary cover that obscures the redemption value on the top of the container, the refund value and the word "Maine" or the abbreviation "ME" must also be printed clearly on the container label using letters, numerals, and symbols not less than 1/8 inch high.

- B. For Wine and Spirit Products with labeling that does not include the required refund value, the Initiator of Deposit shall ensure that a Department-approved sticker that clearly identifies the **Initiator of Deposit commingling agreement in which the initiator of deposit participates** and the deposit/refund value is affixed to the Product container. Prior to the sale of a Wine or Spirit container to which a separate sticker stating the refund value is to be affixed, the **Initiator of Deposit commingling group** shall submit a sample of the sticker to the Department for approval. Approval will be based on the readability, suitability, and durability of the sticker. The Initiator of Deposit on other ~~Liquor~~ Products, other than Products in metal beverage containers, may seek approval to affix an approved refund value sticker to their Product for a limited time to allow product sale in Maine until the Product label can be modified to include the Maine deposit/refund value.

- ~~C. When the Distributor is the Initiator of Deposit, a Manufacturer shall provide its Distributor with evidence that its Product is labeled in accordance with Subsection A, or shall contract with a Product Distributor in Maine to label each Product in accordance with Subsection B. A Distributor acting as an Initiator of Deposit may request the Department review Manufacturer Product labels for compliance with this Section as part of its product label registration. If such a request is made, the Product~~

~~may not be offered for sale in Maine until the Department completes label review and finds that the label meets the standards in this Section.~~

- D. ~~With the exception of Wine products, a~~ All beverage containers sold in the State of Maine must bear a UPC or EAN that is scannable, remains attached to the beverage container after opening, and is unique to each combination of Beverage brand, beverage container material Type, Size and flavor. Malt liquors of the same Beverage brand may utilize one UPC for EAN for their seasonal products in the same beverage container material type and size.

§ 9. Registration of Beverage Containers (Summary: moves label registration to the commingling cooperative, except in the absence of an approved plan; requires information on commingling group instead of pickup agent; limits the amount that can be charged for label registration.)

Each beverage container and its label must be registered with the commingling cooperative or, in the absence of an approved plan, the Department, prior to the Beverage being offered for sale in Maine and annually thereafter. Applications for registration must be on forms or in an electronic format provided by the commingling cooperative or the Department.

A. Registrations must include:

- (1) the Product name;
- (2) the category of Beverage, as delineated in 38 M.R.S. § 3107(1-B)(3); i.e., wine, wine cooler, spirits, beer, water, hard cider/hard juices, other;
- (3) the container Size;
- (4) the container material Type,
- (5) if glass, the color;
- (6) the complete 12 digit UPC or 13-14 digit EAN, unless the product is a Wine product that is not labeled with a UPC or EAN; and
- (7) the commingling group in which the product is included. ~~name and contact information for the entity that will be responsible for picking up beverage containers from Redemption Centers and Dealers, and if the pick-up entity is a Contracted Agent, evidence of a current agreement with that Contracted Agent; and~~
- (8) if not submitted with a previous year's label registration, a copy or photograph of the beverage container label or a signed statement certifying

that the beverage container being registered is marked with the deposit refund value in accordance with 38 M.R.S. §3103 and Section ~~8 7.5 and~~

(9) ~~the appropriate fee in accordance with this Section.~~

- B. If a UPC or EAN on a beverage container is changed during the registration period, that Product will be considered ~~to be discontinued~~ and an application for registration of the Product label bearing the new UPC or EAN ~~and the appropriate registration fee~~ must be submitted ~~to the Department~~ prior to offering the Product for sale into Maine.

D. Fees for label registrations.

(1) Fees for label registration with the Department are as follows:

- (a.) Wine containers: \$1.00 annually per label.
- (b.) All other beverage containers: \$4.00 annually per label.

(2) Fees for registering a label with the commingling cooperative will not be more than \$4.00 annually.

9. 10. Operation of Redeeming Dealers and Redemption Centers (Summary: removes some requirements already included in statute or required by other statutes or regulations; includes requirement from below that sorting be consistent with commingling group or cooperative requests; requires sortation of refillable beverage containers and allows sortation of glass by color under certain circumstances; warning sign language moved here from elsewhere in rule; changed to be consistent with statute in that no cash refund required for bag drop; clarifies the need for on-going and complete acceptance of beverage containers at redemption centers using RVMs; removal of the requirement that a redemption center location must be convenient; requires obligated dealers to label shipping receptacles with redemption location).

~~A. The Redemption Center shall store all empty beverage containers separated from food Products sold on the premises by a solid partition.~~

A. The redeeming dealer or Redemption Center operator will collect and store beverage containers ~~shall operate the Redemption Center~~ in such a manner as not to cause a nuisance to the surrounding area, and shall:

- (1) Take all necessary precautions to eliminate and protect against insect and rodent infestation inside and surrounding the premises.

- (2) Store unsorted and sorted beverage containers separated from all food Products by a solid partition and in a building constructed properly to protect beverage containers from adverse environmental conditions (i.e. rain, snow, mud, etc.).
- ~~(3) Provide sanitary facilities to ensure adequate personal hygiene for employees and which comply with United States Department of Labor standards in 29 C.F.R. §1910.141 as amended up to July 1, 2016. Sanitary facilities include toilet, hand wash sink, approved septic system, and hot and cold potable water under pressure. A Redemption Center is exempt from this requirement if the Redemption Center is operated by the owner and immediate family members only and has no other employees.~~
- ~~(4) Hold a valid retail food establishment license issued by the Maine Department of Agriculture, Conservation and Forestry, Division of Quality Assurance and Regulations if foods or Beverages are sold, and meet all applicable sanitation requirements.~~
- (5) Maintain general surroundings free of litter, and debris, ~~and unused equipment.~~
- (5) Employ routine housekeeping practices to maintain an environment that is clean and orderly to discourage, identify, and eliminate rodents, insects and birds.
- (6) Follow all municipal codes and ordinances.

B. Redeeming dealers and redemption centers will provide sanitary facilities to ensure adequate personal hygiene for employees and which comply with United States Department of Labor standards in 29 C.F.R. §1910.141 as amended up to January 1, 2025. Sanitary facilities include toilet, hand wash sink, approved septic system, and hot and cold potable water under pressure. A redeeming dealer or redemption center is exempt from this requirement if operated by the owner and immediate family members only.

C. Redeeming dealers and redemption centers will submit to inspections by the Department.

~~C. Prominently display a list of all Products discontinued within the past 120 days and the dates when they will no longer be accepted.~~

D. Redeeming dealers and redemption centers will sort beverage containers in the manner method described in an approved commingling cooperative plan, or, in the absence of an approved commingling cooperative plan, in a manner that is consistent with approved commingling agreements group plans. Alternative sorting arrangements consistent with this chapter are permissible in the case of a mutually acceptable written agreement between the redeeming dealer or redemption center and the initiator of deposit, commingling group, commingling cooperative, or contracted agent.

- a. Sortation by size must commingle all sizes that can be sorted together while allowing for an accurate determination of container count with 97% accuracy. Further commingling by size is also allowed.
- b. Sortation by material type may include sortation of glass into clear, brown, and green/blue fractions if material is being marketed to glass-to-glass or refill applications.
- c. Sortation by material type must include segregation of refillable beverage containers.
- d. Sorts must maximize market value and enable material to be made into new beverage containers to the extent possible given statutory restrictions.
- e. ~~Sort beverage containers by like product group, material and Size, and consistent with Commingling Agreements in Shells or boxes as provided by the Manufacturer, Distributor, or pick-up agent.~~

~~(9) Notify the Department of additional members obtained after the issuance of the center's license.~~

E. Redeeming dealers and redemption centers will conspicuously ~~Post~~ a "warning" sign in ~~accordance with Section 18 of this chapter~~ each area where consumers tender returnable containers with wording specified by 38 M.R.S. §3106(10). Warning signs must be constructed of durable materials and printed in horizontal block form. Each letter of the warning sign must be written in bold-face type and measure ~~ing~~ a minimum of 1 inch in height.

G. A redemption center or redeeming dealer may not refuse to accept from any consumer or dealer any empty, unbroken and reasonably clean beverage container of the type, size and brand sold in the State as long as the label for the beverage container is registered in accordance with Section 9 and may not refuse to pay the refund value of the returned beverage container. Redemption centers and redeeming dealers must:

- (1) Inspect each container to ensure it is a registered container unless the Cooperative has allowed otherwise in the cooperative plan; and
- (2) If using reverse vending machines, assure the availability of the machine for use by consumers during normal business hours. The redeeming dealer or redemption center must provide an alternative redemption procedure and conspicuously post a sign directing consumers where to bring any valid beverage containers rejected by the RVM or that cannot be returned through an RVM due to a mechanical breakdown.

- (3) ~~redemption centers will~~ Redemption centers shall be open for business (i.e., acceptance of empty beverage containers) during the hours proposed on its their approved applications ~~a reasonable number of hours, given the volume of returns and area population considered. Redemption centers shall~~ and will post their hours of operation in a conspicuous place that can be seen from outside the redemption center.

Note: Hours during which redeeming obligated dealers must redeem containers are addressed in 38 M.R.S. §3106(4).

- ~~D. The location of proposed and existing Redemption Centers must be convenient to Member Dealers and their customers to be served.~~
- E. Redemption centers may charge a fee to obligated dealers ~~with for~~ which they have agreements in accordance with 38 M.R.S. §3106(1)
- I. A Redemption Center or redeeming dealer may pick up beverage containers from any dealer. ~~non-members.~~
- J. A redeeming dealer or Redemption Center shall tender beverage containers to an initiator of deposit, commingling group, commingling cooperative, or pick-up agent ~~a Distributor or third party Contracted Agent~~ by making reasonable accommodations that allow ~~for the Distributor or third party Contracted Agent to have~~ ease of access to those beverage containers being tendered or, in the event that storage is not convenient to the loading area, by assisting in the loading of the transportation vehicle by moving the properly sorted and packaged beverage containers to a predetermined loading area during pick-up of said containers.
- K. A redeeming dealer or redemption center shall tender to an initiator of deposit, commingling group, commingling cooperative, or pick-up agent only empty, unbroken, and reasonably clean beverage containers with legible labels, unless the containers have been processed through an approved reverse vending machine which meets the requirements of this Chapter. For purposes of this section, unbroken when used in reference to cans and plastic containers means not previously crushed prior to tendering back to an initiator of deposit or pick-up agent.
- L. Empty containers, unless they have been processed through an approved reverse vending machine that meets the requirements of this chapter, must be tendered to the initiator of deposit, commingling group, commingling cooperative, or pick-up agent in shipping receptacles provided or paid for by the initiator of deposit, commingling group, cooperative, or pick-up agent, as described in an approved commingling cooperative plan or in an approved commingling agreement in the absence of an approved commingling cooperative plan, or as mutually agreed upon by the initiator of deposit,

commingling group, commingling cooperative, or pickup agent and the redeeming dealer or redemption center.

- (1) Redeeming dealers or redemption centers buying or otherwise providing their own shipping receptacles must use the same shipping receptacles specified by the commingling group, commingling cooperative, or pick-up agent.
- (2) Redeeming dealers and redemption centers may not alter shipping receptacles.
- (3) Redeeming dealers or redemption centers in need of shipping receptacles that communicate this need in accordance with an approved commingling cooperative plan or, in the absence of an approved plan, in accordance with a commingling agreement, at least 48 hours prior to a planned pickup, will be provided shipping receptacles to replace those being picked up and may request additional shipping receptacles based on increased volume over time or a pending event that will result in a temporary increase in volume.

M. A redeeming dealer will label each shipping receptacle in a manner that identifies the redemption location.

Note: Labeling requirements for redemption centers are addressed in 38 M.R.S. §3109(5-B).

11. Reverse Vending Machines (Summary: added information on department approval of reverse vending machines, as required by 38 M.R.S. § 3102(19); added a process for determining whether material is devalued, as required by 38 M.R.S. § 3106(6))

A. Requirements

- a. ~~RVMs must count and identify the UPC of beverage containers while destroying a nonrefillable containers one-way deposit containers and either rejecting refillable containers or retaining refillable containers without damaging them. RVMs must collect accounting information for deposit and scrap settlement. RVMs must collect accounting information for deposit and scrap settlement.~~
- b. RVMs must meet the requirements of 01-001 C.M.R. ch. 306, (Regulations for Adoption of Type Evaluation of Weighing and Measuring Devices) and be designed to provide an accurate printed report containing all of the following:
 - (a) The number of containers placed in the RVM over an explicit predetermined time period.
 - (b) The Product name of each beverage container placed in the RVM.

- (c) The material type ~~kind~~, Size, and brand of each beverage container placed in the RVM.
- c. An RVM and any report that it provides are subject to inspection and audit by ~~the Maine Department of Agriculture, Conservation and Forestry and~~ the Department.
- D. Each initiator of deposit, commingling group, commingling cooperative, or pick-up agent ~~Distributor~~ of beverage containers which have been processed through an RVM shall have the opportunity to pick up its ~~their~~ share of scrap material, as determined from information gathered from the RVM.
- D. In an RVM System, the RVM provider shall be required to accumulate and maintain data to allow for geographical allocation of scrap pick-up equal to a ~~Distributor's~~ share of containers.
- E. Department approval of reverse vending machines.
- a. The Department will approve reverse vending machines prior to use and will maintain a list of approved reverse vending machines. Reverse vending machines meeting the criteria above will be approved for use in the state.
- b. Redeeming dealers and redemption centers looking to make use of a reverse vending machine will consult with the Department prior to buying or leasing a unit for program use to ensure the model and plan for use meet program requirements.
- c. If a reverse vending machine is determined to devalue material in accordance with 3106 and section F of this rule, current units can continue to operate but no additional units may be approved for use in the state.
- F. Upon request by an initiator of deposit, commingling group, or the commingling cooperative, the Department shall determine whether a beverage container has been processed by a reverse vending machine in a manner that has reduced its recycling value below current market value for a nonrefillable beverage container or has prevented the reuse of a refillable beverage container.
- a. Upon request, the Department will evaluate the relative price of materials that are processed through a reverse vending machine. Upon receiving such a request, the Department will accept relevant information from the cooperative or commingling group requesting the evaluation, the dealers and redemption centers using the reverse vending machine, and any other interested parties for use in making this determination. The Department may consider but is not limited to considering:

- i. Whether buyers are willing to pay the same price for the processed material as for material otherwise processed through the program;
 - ii. If so, the number and availability of buyers willing to purchase the material at that price; and
 - iii. Any material specific savings that arise from the processing method.
- b. If the Departments makes a determination, it will apply to all beverage containers of a given material type similarly processed.
- c. If the Department determines that the net recycling value of a container processing by reverse vending machines is devalued, the commingling group challenging the container recycling value may pick up the material and continue to pay handling fees and deposit refunds on redeemed containers if the redeeming dealer or redemption center operator pays the difference in material value.
- G. Upon request, operators of reverse vending machines must provide full accounting of containers redeemed, by UPC, to the Department.

12. Requirements for account-based bulk processing programs (Summary: new section clarifying functioning of ABBP)

- A. Account-based bulk processing programs must be approved by the Department. Programs shall apply for a license in accordance with Chapter 2 and will be approved if they meet all the requirements of 38 M.R.S. 3101-3119, this chapter, and any current Department-approved commingling cooperative plan.
- B. Account-based bulk processing programs must process all beverage containers using a reverse vending machine.
- C. Account-based bulk processing programs must verify the home address of all account owners and must report on redemptions by account-owners residing out of state, as requested by the Department.

13. Bag drop (Summary: new section clarifying use of bag drop)

- A. Redemption centers collecting containers through bag drop must list all bag drop locations and report the method of payment to consumers on redemption center license applications.

Bag drop locations must meet the requirements of sections (operation of RCs nuisance) and (operation of RCs warning sign).

11. ~~Acceptance of Beverage Containers from Dealers and Redemption Centers~~ Summary: Moved to section redeeming dealers and redemption centers.

~~A. A Dealer or Redemption Center shall tender to an Initiator of Deposit, Distributor, or Contracted Agent only empty, unbroken, and reasonably clean beverage containers with legible labels of the Type, Size, and brand sold by the Initiator of Deposit, Distributor, or Contracted Agent, unless the containers have been processed through an approved RVM which meets the requirements of this chapter. For purposes of this Section, unbroken when used in reference to cans and plastic containers means not previously crushed prior to tendering back to an Initiator of Deposit, Distributor, or Contracted Agent.~~

~~B. With the exception of Beverages specifically exempted in Definitions Section 1(B)(1) of this chapter, a Dealer or Redemption Center shall sort beverage containers by Type, Size, and brand unless a mutually acceptable written agreement, as described in Section 14, is reached between the Dealer or Redemption Center and the Initiator of Deposit, Distributor, or Contracted Agent.~~

~~C. Empty containers, unless they have been processed through an approved RVM that meets the requirements of this chapter, must be tendered to the Initiator of Deposit, Distributor, or Contracted Agent in Shells or Shipping Cartons provided by the Initiator of Deposit, Distributor, or their Contracted Agent, or other containers mutually agreed upon by the Initiator of Deposit, Distributor, or Contracted Agent, and the Dealer or Redemption Center.~~

~~C. Containers may be sorted in any other manner that is consistent with Section 14 of this chapter.~~

12. Pickup from Redemption Centers and Redeeming Dealers (Summary: Adds a requirement that redeeming dealers and redemption centers collecting at least 75,000 units a week have a regular pickup schedule; clarifies that the section applies to pickups from obligated dealers; requires that redemption centers and redeeming dealers be available for pickup during certain hours and that pickup agents schedule a pickup with 48 hours' notice if it is to occur outside a redemption center or redeeming dealer's normal operating hours; requires the Department be notified of missed pickups and allows the Department to consider compensation provided to a redemption center or redeeming dealer by a pickup agent when levying penalties in accordance with 38 M.R.S. § 3111; requires pickup agents to provide an invoice upon pickup; clarifies pickup agent reporting requirements.

~~A. The Initiator of Deposit or their Contracted Agent is responsible for the pick-up of covered beverage containers from a Redemption Center, unless the Initiator of Deposit or their Contracted Agent and the Redemption Center have entered into a written agreement for~~

~~other arrangements for recycling or disposal of beverage containers in accordance with Section 14 of this chapter.~~

~~The Initiator of Deposit or Initiators of Deposit who are members of a Commingling Agreement, and Contracted Agents shall provide licensed Redemption Centers and the Department with up-to-date listings of the Types, Sizes, and brands for which they are responsible, and shall~~ **Requirement to pick up.** On behalf of their initiators of deposit, the Commingling Cooperative or, in the absence of an approved Commingling Cooperative Plan, commingling groups will arrange for pickup of empty, unbroken, and reasonably clean beverage containers of the particular Types, Size, and brand sold by the Initiators of Deposit from **redeeming dealers** and licensed Redemption Centers.

- (1) **Pickups will occur.** at a minimum, every 15 calendar days.
- (2) **Redeeming** dealers and redemption centers that are consistently handling **75,000 units a week** will be picked up on a regular schedule, which may be adjusted seasonally. This schedule **must should** be provided to the **redeeming** dealer or redemption center in writing.
- (3) To the extent feasible, during each pick-up, the entities performing the pick-up shall remove all containers for which they are responsible and that are containerized and ready to be picked up.

B. Scheduling pickups

- (1) After collecting 10,000 beverage containers ~~that are belonging to an Initiator of Deposit, Initiators of Deposit who are members of a Commingling Agreement,~~ the responsibility of a single ~~Contracted entity,~~ a Redemption Center **or redeeming dealer** may request an additional pick up, which must be fulfilled. ~~When a Redemption Center makes a request for beverage container pick up, the Initiator of Deposit or Initiators of Deposit who are members of a Commingling Agreement and Contracted Agents shall fulfill the request~~ no later than ten (10) calendar days starting the day after the request was made unless a longer time frame is mutually agreed upon in writing by the Redemption Center **or redeeming dealer** and the entity responsible for the pickup. This

additional pickup does not count towards the pickups required under Section 12A.

- (2) Redeeming dealers and redemption centers ~~they~~ must be available for scheduled pickups weekdays from 9-5.
- (3) Entities picking up containers must schedule pickups with at least 48-hours' notice if the pickup is going to occur outside of a redemption center or redeeming dealer's regular hours of operation.

If a pickup is missed, it must be reported to the Department. Multiple missed pickups can lead to penalties in accordance with 38 M.R.S. § 3111(3); in levying penalties, the Department will consider any compensation provided to redemption centers or redeeming dealers in exchange for additional storage of containers.

- C. ~~When there is a change in the Initiator of Deposit, or when an Initiator of Deposit changes its Contracted Agent or its participation in a Commingling Agreement, the Initiator of Deposit shall provide Redemption Centers and the Department with notice of any changes that affect container sorting requirements. If there is a change in Initiator of Deposit, the original and new Initiators of Deposit shall determine the date on which the new Initiator of Deposit will be responsible for pick up at the Redemption Centers, and shall notify the Redemption Centers and the Department of the affected brands, the new Initiator of Deposit, whether the brand will be handled as part of a Commingling Agreement, the designated pick up agent, and the effective date of this change. Initiators of Deposit may manage the required notifications through their new Contracted Agents. In no case shall the effective date occur more than 35 calendar days from the date the new Initiator of Deposit takes over sales for the brand.~~

G. Payments and invoicing.

- (4) The entity picking up beverage containers will ~~shall~~ provide the redemption center an itemized receipt of units picked up, by sort, before leaving the facility. The receipt shall include unit totals and monetary value.

~~13. Time for Payment by Initiators of Deposit, Distributors, or Contracted Agent to Dealers and Redemption Centers~~

- (4) (2) The cooperative, or the commingling group in the absence of an approved cooperative plan, The Initiator of Deposit, Distributor, or Contracted Agent shall pay the redeeming Dealer or Redemption Center all applicable deposit values, handling fees, and refunds associated with shipping receptacle purchases or deposits ~~refunds, deposits, and handling charges~~ no later than ten ~~(10)~~ business days after acceptance.

B. Reporting

- (1) Pick-up Agents shall provide to the Department current lists of initiators of deposit with whom they have contracts and beverage containers which they pick up.
- (2) Entities picking up beverage containers must annually report to the Department, on forms prescribed by the Department, the number of beverage containers redeemed from each redemption center and redeeming dealer and the total number of containers redeemed by sort and redemption value.

~~14. 13 Private Contracts and Business Transactions~~ (Summary: expands applicability.)

This chapter shall not be interpreted to prohibit any other arrangements for sorting, delivery, acceptance of payment, or other matter related to beverage containers when the arrangement is consistent with 38 M.R.S. §3101 *et seq.* and is mutually agreed upon in writing ~~between the Distributor and the Dealer or Redemption Center, or an RVM provider and the Distributor and/or Dealer or Redemption Center~~ between all affected parties. The Department shall not be responsible for enforcing the terms of any such alternative private arrangements and is responsible for enforcing 38 M.R.S. § 3101-3119 and this chapter. Previous existence of a written agreement can be considered by the Department during determination of appropriate enforcement action for any inconsistencies with this chapter that occurred under a written agreement and before one entity informed the other of a desire to change that agreement.

~~15. 14. Refusing Payment When a Specific Beverage Product is Discontinued~~

~~Distributors, Contracted Agents, IODs, redeeming Dealers, and Redemption Centers shall not refuse to pay the refund value of the returned a beverage container as established by 38 M.R.S. §3103, as amended, or in the case of an inappropriately labeled container which bears a deposit value for a Beverage which is exempt from the bottle bill, except that Distributors, Dealers, and Redemption Centers may refuse to pay such refund value in the following situations:~~

- A. The initiator of deposit may refuse to pay the refund value and handling cost of beverage containers in accordance with 38 M.R.S 3106(6).

- B. ~~When an~~ If an initiator of deposit will no longer be responsible for initiating the deposit on a beverage container.
- a. the initiator of deposit must provide notice, in writing, to the commingling cooperative and the commingling group of which it is a member. The commingling cooperative or commingling group can provide written notice to redeeming obligated Dealers to whom the Initiator of Deposit or Distributor sold similar beverage containers and the licensed Redemption Centers serving those Dealers that the particular product Types, Size, and brand offered for refund has been discontinued. The initiator of deposit may begin to refuse to pay the refund value and handling fee for the beverage container 4 ~~12~~ 4 months after the mailing of such notice.
- ~~C. A~~ A redeeming Dealer or Redemption Center may refuse to pay a consumer the refund value of Beverages discontinued by an Initiator of Deposit, ~~Distributor, or Contracted Agent~~ in accordance with Subsection A above, no sooner than 3 ~~11~~ 3 months after the ~~Distributor has~~ IOD mailed the notice required by Subsection A. ~~A Dealer or Redemption Center may not refuse to pay the refund value of discontinued beverages unless such Dealer or Redemption Center has conspicuously posted for at least 30 days a notice advising consumers of the final date of acceptance.~~
- ~~D. A Contracted Agent may refuse to pay the refund value when the Contracted Agent has not received payment from the Initiator of Deposit in accordance with the terms of their contract, and the Contracted Agent has given notice, in writing to the licensed Redemption Centers that the Contracted Agent will cease accepting beverage containers that are the responsibility of that Manufacturer as of the next day subsequent to the delivery date of such notice. A Dealer or Redemption Center may notify their Member Dealers and refuse to pay the refund value of Beverages for which a contacted agent has provided written notice in accordance with this paragraph.~~
- E. When an initiator of deposit ceases to belong to a commingling group or is not in compliance with the requirements of an approved commingling cooperative plan.
- i. the commingling cooperative or, if no there is no currently approved commingling cooperative plan the commingling group, may inform redemption centers and redeeming dealers in writing that the initiator of deposit's containers are no longer eligible for pickup. After providing a final pickup that includes the containers, the commingling cooperative or commingling group may refuse to pay the refund value or handling fee for any future containers received.
- ii. A redeeming dealer or redemption center may refuse to pay the refund value for any beverage container about which it has received notice in accordance with (previous paragraph).

16. ~~Exempt Facilities~~ (Summary: cut; previous exemption removed.)

~~Apple cider and blueberry juice that is produced in the State of Maine is exempt from the required refund and deposit. Local producers bottling apple cider and blueberry juice in containers that do not bear a deposit/refund statement shall receive empty containers from consumers who voluntarily return them without deposit. The opportunity for consumers to return empty containers shall be conspicuously posted at the producer's place of business and should encourage the return of containers to the processor for recycling.~~

17. ~~Plastic Bag Specifications~~ Plastic Bag Specifications (Summary: No changes made.)

~~Plastic bags used to tender beverage containers by Redemption Centers to Distributors or third party agents must be of uniform dimensions that are 36 inches in width by 60 inches long with a minimum thickness of 1.2 mils (millionths of an inch) and with flat bottoms.~~

Plastic bags used to tender beverage containers by redeeming dealers and redemption centers to distributors or third-party agents must be of uniform dimensions that are 36 inches in width by 60 inches long with a minimum thickness of 1.2 millionths of an inch and with flat bottoms.

18. ~~Signs Conspicuously Posted~~ (Summary: moved or redundant.)

~~C. Each area of a Redemption Center where consumers tender returnable containers must have a "Warning Sign" conspicuously posted with the required wording specified by 38 M.R.S. §3106(10). Warning signs must be constructed of durable materials and printed in horizontal block form. Each letter of the warning sign must be in bold and measuring a minimum of 1 inch in height.~~

~~D. Member Dealers that do not provide the refund value to consumers for returned containers shall conspicuously post the name and address of the Redemption Center which serves the Dealer for purposes of redeeming returnable beverage containers of the Types, Size, and brand sold by the Dealer.~~

19. 15. Audits (Summary: removal of redundant language and requirements to use NIST weights and measures standards; added language on how off-site audits should be conducted, how results should be used to adjust payment, and which results can lead to Department enforcement action.)

~~A. Initiators, Distributors, and third party Contracted Agents may conduct audits to determine accuracy of container counts for bags tendered as full bags by Dealers and Redemption Centers.~~

~~B. The audits must follow accepted Weights & Measures laws and procedures. Audits must follow the procedure in the U.S. Commerce National Institute of Standards and Technology (NIST) handbook 133, Checking the Net Contents of Packaged Goods (2015), Chapter 1, Section 1.3.1. Audit Tests. If after the audit there is suspicion that~~

~~the lot tested is not in compliance, a full "Category A" sampling plan, following test procedures found in NIST Handbook 133, Chapter 4, test procedures for packages labeled by count, must be conducted before an enforcement action can be taken. Due to excessive variation for individual containers caused by residual liquids and foreign material, the weight method of checking packages labeled by count is not acceptable and a physical count must be used.~~

- C. In order for a commingling group, pick-up agent, or the cooperative to adjust payment to a redeeming dealer or redemption center as a result of incorrect beverage container counts found during an offsite audit, the audit must randomly select shipping receptacles from the redeeming dealer or redemption center being audited for all sorts to be audited and must be performed in the presence of a Department approved neutral third party funded by the commingling group, pick-up agent, or the cooperative. Department staff or a representative of a redemption center must be informed and may attend. Any adjustment to payment should must apply the ratio of containers counted to containers reported for each sort to all shipping receptacles of those sorts collected during the pickup.
- D. Actual counts for each sort counted during audits performed should be reported to the Department.
- E. Any Department enforcement action may only be taken on shipping receptacles bags for which an accurate, and consistent, and verifiable full bag count has been established. Weights & Measures standards package quantity declarations of count require an accurate physical count. Industry may negotiate and reach agreements with parties involved in these transactions that establish a number agreed to by all parties that is acceptable as a full bag count. These counts will only be deemed verified when sorting criteria does not introduce large uncertainties into the process, such as commingling of different sized containers into the same bags. Bag sorts that allow variations in count may not be audited or checked for purposes of taking action on the final count for payment by the initiator, Distributor, or third party Contracted Agent.

18. Cost and Carbon Efficient Technology Fund (Summary: new section that requires the department to study the operational efficiency of technologies and the models that can be used to employ them; requires the department to develop a grant application with input from the cooperative and its advisory group.)

- A. The department shall undertake efforts to understand and quantify the operational efficiency and impact on greenhouse gas emissions from trucking of various technologies meeting the qualifications described in 38 M.R.S. § 3114-A(23)(A) and under various throughput scenarios, including for individual redemption centers, account-based bulk processing programs, bag-drop programs and hub and spoke models, including models that use high throughput technologies to sample or audit container counts prior to sorting, baling, and otherwise processing recyclable materials. These efforts shall allow for and encourage stakeholder input.

B. After consultation with the cooperative and its advisory group, the Department shall establish an application process that:

- a. Identifies priorities for grant funding, in the event funding is insufficient to cover the cost of all qualified grant proposals;
- b. Allows for various levels of review for grants of different cost tiers and for those that are more and less proven in terms of their ability to improve operational efficiency and reduce greenhouse gas emissions from trucking;
- c. Allows for all program participants to apply for funding;
- d. Allows for cooperative, commingling group, initiator of deposit, and advisory group input on applications;
- e. Is efficient at funding proposals that are proven to improve operational efficiency and reduce the greenhouse gas emissions from trucking; and
- f. Does not fund proposals that are not proven to improve operational efficiency and reduce the greenhouse gas emissions from trucking, unless they are pilot programs designed to provide information on the effect of an application of technology where the operational efficiency and emissions impact is less well understood.

16. Commingling Groups

A. All commingling groups will submit agreements to the Department for approval. The Department will approve agreements that are consistent with 38 M.R.S. §§3101-3119 and this chapter for a period of no more than 5 years. Any changes to rule or statute require resubmittal of agreements within 90 days ~~3 months~~ of the effective date of the change, unless the Department determines that the change does not require resubmittal and informs the commingling groups of this determination in writing. Commingling groups must inform the Department of changes to the participating initiators of deposit and point of contact within ~~30 days~~ 48 hours and submit any other desired changes to an agreement to the Department for approval prior to implementing those changes. Agreements must allow for a full understanding of commingling group operations and must include the following:

- (1) Contact information, including a specific individual as a point of contact;
- (2) A description of how initiators of deposit can join the commingling group, including timeline and requirements to join and a description of the full on-boarding process, which must allow new initiators of deposit to join under the same terms and conditions of the original agreement;
- (3) A description of how, and under what circumstances, members can be removed from the commingling group. The method of removal must stem from insufficient payment or

- ~~require~~ repeated violation of commingling group bylaws and ~~must outline~~ progressive enforcement of bylaws by the group;
- (4) A list of the initiators of deposit participating in the commingling group;
- (5) A description of how costs will be allocated among the members, including: ~~any~~
- (a) the method or methods for fairly allocating costs, which may include sales data, statistically significant sampling of redemption data, or, in cases where no other data are available, use of redemption data from reverse vending machines;
 - (b) procedures for verifying information used to allocate costs;
 - (c) any fees reflecting different costs associated with beverage containers of certain container designs or composition, which may not include added fees for reusable beverage containers; and
 - (d) a method by which an initiator of deposit that takes back a reusable beverage container outside the redemption system can have its cost allocation adjusted accordingly;
- (6) A description of how deposits, handling fees, and any other required payments will be collected and managed, including requirements that
- (a) All funds be kept in a reputable institution with reliable customer service, preferably with a presence in Maine, with low fees;
 - (b) Monies in excess of the \$250,000 FDIC insurance limit will be insured via collateral, insured cash sweeps, or Treasuries;
 - (c) Investment of funds will only occur in accordance with an investment policy approved by initiator of deposit members, balancing safety, liquidity and return;
 - (d) The commingling group seek competitive bids whenever possible prior to the selection of investments;
 - (e) Expenditures will require dual authorization; and
 - (f) Regular financial reporting will be made available to the member initiators of deposit.
- (7) A description of how the group will manage beverage containers for its members, including

- (a) size and material type sorts;
 - (b) pick up arrangements for use in the absence of an approved commingling cooperative plan, which must identify entities responsible for pickup in all areas of the state; and
 - (c) shipping receptacles to be used by these facilities-redeeming dealers or redemption centers and any provision or reimbursement thereof;
- (8) The method by which member initiators of deposit will make decisions, including to select the commingling group's representation on the cooperative board;
 - (9) The method by which the commingling group will conduct any audits of redemption centers;
 - (10) An acknowledgement that, if a commingling cooperative plan is not in effect, the commingling group will resume its responsibilities within 15 days; and
 - (11) For qualified commingling agreements, documentation demonstrating the commingling group meets a criterion to be a qualified commingling group in accordance with 38 M.R.S. §3107(1-A).
- H. At the request of the department, commingling groups must identify the reason for rejecting a new member.

~~I. In the absence of an approved commingling cooperative plan, commingling groups must report to the department, either directly or through a contracted agent, the number of beverage containers for which it reimbursed each redemption center. This report must be submitted annually by March 1 on Department approved forms.~~

17. Commingling Cooperative

Commingling groups shall collectively establish a cooperative to provide for the management of all beverage containers under a single commingling program in accordance with 38 M.R.S § 3107(3-B).

~~A. Members of the Commingling Cooperative Board must be allocated to commingling groups as follows:~~

- ~~(1) Each commingling group first receives one board member representing the commingling group.~~
- ~~(2) The commingling group with the most sales of each beverage type, as defined by like products in 38 M.R.S. § 3107(3) (A — B), receives an additional board member that must be an initiator of deposit selling that beverage type.~~

~~(3) If additional seats remain or there are an even number of seats, the board members representing the commingling groups, as identified in (1) and (2) above, may select additional board members who can represent the most common beverage container material types in order to obtain 9 members.~~

B. The cooperative's decision-making structure must provide for fair decision-making with respect to all aspects of its work that influence cost apportionment.

(1) The cooperative's bylaws, operations plan, and functioning cannot require initiators of deposit to participate in paid industry groups or take other actions not required for program function in order to receive equal representation in votes of the membership or on the cooperative's board.

(2) One seat on the board must equate to one vote.

(3) The cooperative must audit information used to allocate costs. It cannot rely on commingling groups to audit their own members and, for each of the cost allocation methods listed in the plan, audit procedures and auditors must be consistent across commingling groups.

C. The Cooperative must submit a cooperative plan, which will detail how the Cooperative will provide for the management of all beverage containers subject to the requirements of Chapter 33. In addition to the requirements listed in 38 M.R.S. § 3107(3-B)(B), the cooperative plan must include, at a minimum:

(1) ~~The A description of the governing board specifying that commingling groups will select their own representation.~~

~~(a) The cooperative plan must outline how the cooperative will compensate the members of the board.~~

~~(b) The cooperative plan must outline how the members of the board that represent commingling groups, as outlined in Section 17(A)(1) and 17(A)(2), will select additional members in accordance with 17(A)(3).~~

(2) Roles within the cooperative. The cooperative plan must outline methods of cooperative decision-making, which must include:

(a) clear distinctions around when decisions will be made based on a vote of IODs and when decisions will be made based on a vote by the board;

(b) whether decisions can be made in a manner other than through a vote by the board or by IODs, and if so, how and under what circumstances;

- (c) the method by which IODs will be assigned voting rights, including any weighting of those rights;
- (d) the manner in which IODs or board members will vote to update portions of the plan; and
- (e) the manner in which IODs or board members will vote to contract out services.

(3) Composition and role of the advisory board.

- (a) The cooperative plan must outline how the Cooperative will recruit and select, and compensate the members of the advisory board to meet the membership representation requirements listed in 38 M.R.S. § 3107 3-B (A). The Department representative does not need to be compensated beyond that required by 38 M.R.S. §3107(G);
- (b) Role of the advisory board. The plan will outline the role of the advisory board, including,
 - i. How the advisory board will remain apprised of cooperative activities;
 - ii. What activities or information, if any, will not be shared with the advisory board, including, for any information that will not be shared, reasoning as to why sharing such information would adversely affect cooperative functioning; and
 - iii. The manner in which the advisory board can bring an issue, including a change to cooperative bylaws or the cooperative plan or a decision to contract out services, to a vote of IODs or the board

(4) Convenience Standard. The cooperative plan must outline how it will evaluate attainment of the convenience standard outlined in section 17(D) and if the convenience standard is not being met how it will ensure the standard is attained and a schedule for when the standard will be met.

(5) A process for reviewing the plan prior to renewal or a plan update every two years, which must include

- (a) Public comment.
- (b) Input from the advisory committee, including suggested changes, any one of which can be brought to a vote of initiators of deposit is binding if agreed to by two thirds of advisory committee members.

- (c) Submitting an updated plan to the Department at least once every 5 years.
- (6) A description of how the cooperative will support the development of infrastructure throughout the State for the collection and sanitization of refillable beverage containers and for the return of those refillable beverage containers to initiators of deposit of refillable beverage containers for refilling and sale. That infrastructure development may involve redemption centers, centralized washing and sanitization facilities, and other methods; and must include:
- (a) A needs assessment identifying the location of current and probable beverage filling locations in the state, optimal locations for sanitation facilities, and budgets for sanitation and filling locations to support a situation where 5% and 10% of beverage containers are refillable.
 - (b) A study of existing refill systems in other jurisdictions and countries world-wide, including descriptions of methods for refilling beverages, collecting and sanitizing beverage containers, return rates, and rates of market penetration.
 - (c) A description of how funds will be expended in accordance with 38 M.R.S. §3108-A(2)(B)(4-A).
 - (d) A description of how facilities funded in accordance with 38 M.R.S. §3108-A(2)(B)(4-A) will be made available for use by all initiators of deposit that agree to comply with the terms of use for a given facility.
- (7) A description of how the cooperative will operate the program in a manner designed to achieve the overall statewide redemption rates described in 38 M.R.S. §3107(3-B)(B)(16), including a set of actions that will be taken if these redemption rates are not being met. If one of these redemption rates is missed by five or more percentage points, this set of actions must include:
- (a) An increase in the deposit amount on containers other than wine and spirits containers of 50 milliliters or less; or
 - (b) A combination of education and increased redemption center convenience.
- ~~(8) The cooperative plan shall outline standards to provide for fair apportionment of costs among initiators of deposit the commingling groups in the program, which may must be based on:~~
- ~~(a) The combined b Beverage container sales by the initiators of deposit that are members of each commingling group, with sales measured reported in accordance with section (IOD reporting)20(J). If Maine specific sales data~~

~~are not available, sales must be estimated using one of the following methods:~~

~~i. Statistically significant audits of all redeemed containers;~~

~~ii. In cases where Maine sales data and statistically significant audits of all redeemed containers are not available, and if at least 60% of redeemed containers are collected through reverse vending machines and their geographic locations or association with certain retailers will not skew redemption results, the unit or brand counts generated by RVMs or account-based bulk processing programs, as long as the RVM or account-based bulk processing programs are subject to periodic 3rd-party audits on a schedule approved by the Department and with the costs of those audits paid for by the Cooperative;~~

~~iii. Estimating sales through all distribution pathways in accordance with section (IOD sales reporting estimates);~~

~~(b) Beverage container characteristics that may increase costs or lower the value of commingled materials; and~~

~~(c) Statistically significant audits of all redeemed containers; and~~

~~(d) The statewide rate of redemption.~~

~~(9) A method for dealing with obligated dealers and redemption centers that request a pickup, in accordance with Section 12(D) and do not provide a pick-up agent with a full truck of containers.~~

~~(10) A method of sharing among pick-up agents, commingling groups, and the Department information on the number of containers by material type picked up at each obligated dealer that redeems containers and each redemption location during the previous calendar year.~~

~~(11) The method and process by which the cooperative will calculate the total amount of unclaimed deposits expended by the cooperative in accordance with 38 M.R.S. § 3108-A(2) during the previous calendar year.~~

~~(a) The method cannot count the operational expenses of collecting and transporting refillable beverage containers toward the \$500,000 expenditure required by 38 M.R.S. § 3108-A(4-A).~~

~~(b) If the process of calculating unclaimed deposits includes periodic determinations throughout the course of the year, it must also include a~~

mechanism to ensure that any such determinations overestimating the number of unclaimed deposits result in return of redeemed deposits to the fund in which deposits are initially received such that total unredeemed deposits for the calendar year are equal to total deposits charged minus total deposits redeemed.

- (12) If requesting that the Department keep parts of the commingling cooperative plan confidential, a redacted copy with rationale for why each section is considered confidential.
- (13) A description of how the cooperative will service redemption centers and ~~redeeming obligated~~ dealers, including information on shipping receptacles to be used by these facilities.
- (14) A description of any fees proposed by the Commingling Cooperative and under which conditions these fees may be applied. No fee may be large enough to constitute a barrier to inclusion in the program.

D. Convenience Standard. The cooperative must meet a convenience standard in which:

- (1) Every municipality with a population of greater than 2,000 must have at least one redemption location ~~or a redemption location in an abutting municipality, which must consist of either a manual sorting redemption center, RVM, bag drop programs, or account-based bulk processing programs. If this piece of the standard is not met, consideration can be made for redemption centers in neighboring towns;~~
- (2) Every municipality with a population of greater than 5,000 must have at least two redemption ~~locations~~ centers, which must consist of including at least one full-service ~~manual sorting~~ redemption center;
- (3) Every municipality with a population greater than 20,000 must have at least three redemption ~~centers~~ locations, which must include at least one ~~manual sorting~~ full-service redemption center;
- (4) Every municipality with a population of greater than 30,000 must have at least five (5) redemption ~~centers~~ locations, which must consist of including at least one ~~manual sorting~~ full-service redemption center; and
- (5) Every municipality that is considered a primary, secondary, small, or specialized Maine Service Center as identified by the Department of Agriculture, Conservation, and Forestry's Municipal Planning Assistance Program must have a mix of redemption options ~~that consist of either a manual sorting including a full-service redemption center and a RVM, bag drop programs, or account-based bulk processing programs.~~

E. Cooperative accounts.

- (1) All cooperative accounts will be kept in a reputable institution with reliable customer service, preferably with a presence in Maine, with low fees.
- (2) Monies in excess of the \$250,000 FDIC insurance limit will be insured via collateral, insured cash sweeps, or Treasuries.
- (3) Investment of funds will only occur in accordance with a board approved investment policy balancing safety, liquidity and return, and the cooperative board will seek competitive bids whenever possible prior to the selection of investments.
- (4) Expenditures will require dual authorization from cooperative officials.
- (5) Regular financial reporting will be made available to the board.
- (6) The cooperative must deposit the refund value for all beverage containers subject to the requirements of this chapter and sold by the members of the cooperative into an account where they are maintained separate from all other revenues until the cooperative has determined the number of deposits that are unredeemed, in accordance with its operations plan, at which point deposits expected to be redeemed can be moved to an account where handling fees and plastic bag reimbursements are deposited for use in the payment of redemption centers and redeeming dealers.

18. Remittance of unclaimed deposits to the department.

If at any time after January 15, 2026, there is no approved commingling cooperative plan, the cooperative must either directly, or if proper staffing and accounts are not available, indirectly through commingling groups, deposit unclaimed deposits in the Beverage Container Enforcement Fund as follows.

A. Determining unclaimed deposits.

- (1) Member initiators of deposit must report on and pass all deposits charged to the commingling group or cooperative once every 30 days. In cases where the initiator of deposit is not able to initiate deposits accurately, as determined by an inability to meet reporting standards in section (initiators, reporting, 2) without estimating or has had a failed audit, the results of which have not yet been remedied, total deposits owed will be estimated by using one of the following methods, which are listed in order of preference.
 - a. Using statistically significant sampling of redeemed containers.
 - i. Statistically significant sampling must include all beverage containers redeemed through the program in the population to be sampled and provide on-going sampling of containers. Sampling must provide results that estimate the relative quantity of beverage containers belonging to a given initiator of deposit with 90% confidence, $\pm 5\%$.

- ii. The Department will calculate the total deposits owed by an initiator of deposit as follows: total sales by initiators with known sales data during reporting period * most recently calculated redemption rate * the estimate of the percent of sampled units redeemed over the last calendar year belonging to the initiator of deposit * 1/ the percent of sampled units redeemed over the last calendar year belonging to the initiators of deposit reporting reliable sales data.
- b. If no statistically significant sampling data are available, the Department will base payment on the relative number of containers redeemed through reverse vending machines as long as at least 60% of redeemed containers are collected through reverse vending machines and their geographic locations or association with certain retailers will not skew redemption results.
 - i. If the initiator of deposits containers make up less than 1% of those redeemed through reverse vending machines, charging for: $.01 * \text{total redeemed containers during the most recent reporting of redeemed containers to the department} * 1/12 * 1/ \text{the most recently calculated rate of redemption}$.
 - ii. If the initiator of deposits containers make up more than 1% and less than 5% of those redeemed through reverse vending machines, charging for: $.05 * \text{total redeemed containers during the most recent reporting of redeemed containers to the department} * 1/12 * 1/ \text{the most recently calculated rate of redemption}$.
 - iii. If the initiator of deposits containers make up more than 5% and less than 10% of those redeemed through reverse vending machines, charging for: $.1 * \text{total redeemed containers during the most recent reporting of redeemed containers to the department} * 1/12 * 1/ \text{the most recently calculated rate of redemption}$.
 - iv. If the initiator of deposits containers make up more than 10% and less than 20% of those redeemed through reverse vending machines, charging for: $.2 * \text{total redeemed containers during the most recent reporting of redeemed containers to the department} * 1/12 * 1/ \text{the most recently calculated rate of redemption}$.
 - v. If the initiator of deposits containers make up more than 20% and less than 30% of those redeemed through reverse vending machines, charging for: $.3 * \text{total redeemed containers during the most recent reporting of redeemed containers to the department} * 1/12 * 1/ \text{the most recently calculated rate of redemption}$.
 - vi. If the initiator of deposits containers make up more than 30% and less than 40% of those redeemed through reverse vending machines, charging for: $.4 * \text{total redeemed containers during the most recent reporting of redeemed containers to the department} * 1/12 * 1/ \text{the most recently calculated rate of redemption}$.

- total redeemed containers during the most recent reporting of redeemed containers to the department * 1/12 * 1/ the most recently calculated rate of redemption.
- vii. If the initiator of deposits containers make up more than 40% and less than 50% of those redeemed through reverse vending machines, charging for: .5 * total redeemed containers during the most recent reporting of redeemed containers to the department * 1/12 * 1/ the most recently calculated rate of redemption.
- viii. If the initiator of deposits containers make up more than 50% and less than 60% of those redeemed through reverse vending machines, charging for: .6 * total redeemed containers during the most recent reporting of redeemed containers to the department * 1/12 * 1/ the most recently calculated rate of redemption.
- ix. If the initiator of deposits containers make up more than 60% and less than 70% of those redeemed through reverse vending machines, charging for: .7 * total redeemed containers during the most recent reporting of redeemed containers to the department * 1/12 * 1/ the most recently calculated rate of redemption.
- x. If the initiator of deposits containers make up more than 70% and less than 80% of those redeemed through reverse vending machines, charging for: .8 * total redeemed containers during the most recent reporting of redeemed containers to the department * 1/12 * 1/ the most recently calculated rate of redemption.
- xi. If the initiator of deposits containers make up more than 80% and less than 90% of those redeemed through reverse vending machines, charging for: .9 * total redeemed containers during the most recent reporting of redeemed containers to the department * 1/12 * 1/ the most recently calculated rate of redemption.
- xii. If the initiator of deposits containers make up more than 90% and less than 100% of those redeemed through reverse vending machines, charging for: total redeemed containers during the most recent reporting of redeemed containers to the department * 1/12 * 1/ the most recently calculated rate of redemption.
- c. In the absence of sales data, statistically significant sampling, and adequate data from reverse vending machines as described in section (ii above), using the sales estimated in accordance with section (IOD sales reporting) and charging for 110% of the estimated beverage containers.

- (2) The Department shall determine unredeemed deposits from total deposits owed by applying the redemption rate figured by the Department after the most recent reporting by pick up entities and initiators of deposit to the total deposits owed.
- B. Invoicing and payment. Upon determination of unredeemed, the Department will invoice the commingling group or cooperative for unredeemed deposits, providing information on unredeemed owed by initiators of deposit that did not report accurate sales data. The commingling group or cooperative will remit payment to the Beverage Container Enforcement Fund.
- C. True up. After March 1 reporting of units redeemed for a calendar year, any erroneous payments resulting from inaccurate estimations of the number of containers redeemed will be accounted for such that unclaimed deposits paid to the department during the calendar year equal total deposits charged during the calendar year, as determined through section determining unclaimed deposits, minus total containers redeemed, as reported to the Department.
 - (1) If the department was underpaid, it shall invoice the commingling group or commingling cooperative.
 - (2) If the department was overpaid, it shall subtract the overpayment from the next payment of unredeemed deposits due.